

*REMARKS/ARGUMENTS**Discussion of the Claim Amendments*

Claims 27 and 33 have been amended to recite a *nematicide product*, which comprises a *container labeled as containing a nematicide*. Claims 28-32, have been amended to refer to a *nematicide product* so as to more properly comport with claim 27 from which they depend.

The amendments to claims 28-33 are supported by the disclosure in the present application of a loquat kernel composition for use as a nematicide, which can be in a container (e.g., page 2, lines 19-20; page 13, line 23; page 19, line 14). As those of ordinary skill in the art would readily appreciate, any commercial embodiment of the claimed nematicide would implicitly and necessarily entail the use of a container with an appropriate label, especially considering that a nematicide, like any pesticide, has a level of toxicity (e.g., page 19, line 7; page 20, line 27). Accordingly, no new matter has been added by way of these amendments. *See, e.g., Vas-Cath v. Mahurkar*, 935 F.2d 1555, 1563, 19 USPQ2d 1111, 1116 (Fed. Cir. 1991) (a description is sufficient if a skilled artisan would have understood the inventor to be in possession of the invention, even if every nuance of the claims is not explicitly described).

Discussion of the Restriction Requirement

The Office Action requires restriction of the present application to one of two enumerated groups of claims, described in the Office Action as follows:

Group I: Claims 1-26 directed to a method for killing, repelling, or inactivating nematodes; and

Group II: Claims 27-37 drawn to a loquat kernel composition and method of making the composition

The Office Action alleges that the subject matter defined by the two groups of claims lacks unity because US 2001/0009903 discloses a loquat kernel composition that allegedly anticipates the claims of Group I, but not the claims of Group II.

Applicants elect, with traverse, the claims of Group I (claims 1-26). However, Applicants request reconsideration of the restriction requirement. The pending claims are directed to a nematicide product and the manufacture and use thereof. Thus, all of the pending claims share the special technical feature of a nematocidal use of the loquat kernel.

Furthermore, this special technical feature provides a patentable contribution over the prior art. US 2001/0009903 discloses only the use of loquat kernel compositions for the treatment of cancer. Nothing in the cited reference discloses or suggests the use of such compositions as nematicides. Thus, the cited reference also fails to disclose or suggest a loquat kernel composition in a container labeled as containing a nematicide, as recited in the pending claims.

For the foregoing reasons, the pending claims are unified by a special technical feature and should be examined together. Applicants therefore respectfully request that the restriction requirement be withdrawn.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John L. Gase', is written over a horizontal line.

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